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BEFORE THE INSURANCE COMMISSIONER  
OF THE STATE OF WASHINGTON

In the Matter of the Application regarding  
the Conversion and Acquisition of Control  
of Premera Blue Cross and its Affiliates

Docket No. G02-45

PROTECTIVE ORDER

Introduction

This Protective Order in the above-entitled matter (“Matter”) applies to  
PREMERA and Premera Blue Cross (collectively, “Premera”); to the four intervenor  
groups (Washington State Medical Association; The Hospital Associations; Premera  
Watch Coalition; and The Alaska Intervenors (hereinafter collectively, the “Intervenor  
Groups”) and their constituent intervenors; and to the respective, directors, officers,  
employees, agents, lawyers, consultants, experts and any other person or entity under the  
direction or control of Premera, the Intervenor Groups and their constituent intervenors.

For the convenience of drafting, each of Premera and the Intervenor Groups is  
referred to hereinafter as a “party” and all of them are referred to as the “parties.”  
(Premera generally objects to the use of “party” or “parties” in reference to Intervenor  
Groups. Use of such terms in this Order is not intended to overrule or waive such  
objection.)

This Protective Order shall not be interpreted as an agreement, authorization or  
mandate by or for any party to waive, forgo or restrict its ability to gain access to  
information through the Washington State Public Disclosure Act, RCW ch. 42.17,  
Alaska’s Public Records Law, AS 40.25.100 *et seq.* or the federal Freedom of Information  
Act, 5. U.S.C. 552, *et seq.* as amended in Public Law 104-231 or other legal authority for

1 gaining access to information outside of formal discovery, or to disseminate information  
2 obtained by a party in that manner.

3 This Protective Order does not affect the authority to receive or review  
4 information covered by this Order of (1) the Commissioner, his legal counsel, the  
5 Washington Attorney General and their respective staffs that have been assigned to assist  
6 them in regard to this matter, (2) the OIC Staff, its legal counsel and its consultants, or (3)  
7 the Alaska Division of Insurance (“ADI”), its legal counsel and its consultants.

8 The Special Master and the Commissioner hereby make the following FINDINGS:

9 1. It is likely that discovery in this Matter may require disclosure of  
10 information containing trade secrets and non-public proprietary business information and  
11 that such information will be required to be used in the course of discovery (e.g., in  
12 depositions), in pre-hearing motions, and at the final adjudicative hearing in order to  
13 resolve the issues in this Matter.

14 2. Absent a protective order and the entry of confidentiality agreements  
15 between Premera and each of the Interveners (hereinafter, “Confidentiality  
16 Agreement(s)”), a significant risk exists that trade secrets and non-public proprietary  
17 business information might be used by the producing party’s competitors, customers or  
18 other parties with whom the producing party does business or might become available to  
19 persons or entities who have no legitimate need for such information other than in this  
20 Matter, that is, in the review of Premera’s proposed conversion by the Insurance  
21 Commissioner and by the Attorney General. Disclosure of such information to the public,  
22 competitors, customers or other parties doing business with the producing entity may be  
23 seriously detrimental to the entity producing the information.

24 3. A protective order is necessary in this Matter in order to govern the  
25 disclosure and use of such information. Confidentiality agreements between Premera and

1 each of the Interveners would be useful in order to be able to effectively and promptly  
2 protect such information and enjoin any unauthorized use or dissemination of such  
3 information.

4 Based upon the Findings above and pursuant to RCW 34.05.446(1) and the  
5 previous orders entered herein, the Special Master hereby RECOMMENDS and the  
6 Commissioner hereby ORDERS that the procedures set forth below be followed with  
7 respect to information, documents, or other things obtained via document requests,  
8 subpoenas, depositions or other discovery methods in this Matter:

9 **1. Definitions.**

10 (a) Confidential Information: As used herein, “Confidential Information” shall  
11 mean any information, documents, testimony, or other things furnished in the course of  
12 this Matter (1) that contains proprietary data, know-how, other valuable commercial  
13 information, or personal information involving a subscriber, member, officer, director, or  
14 employee, and (2) that a party or third party, in good faith, deems confidential and  
15 designates as “Confidential Information” pursuant to the procedures set forth below.

16 The term shall include information, documents, testimony, or other things obtained  
17 from, or about, a third party via subpoena, deposition, or other discovery in this  
18 proceeding. The term “document(s)” shall be broadly construed to include information  
19 that is recorded in any form, including but not limited to hard copy, electronic copy, and  
20 video.

21 (b) Attorneys’ Eyes Only Information: Any information produced by any  
22 party that contains trade secrets may be designated in writing as “Attorneys’ Eyes Only  
23 Information.” The term “trade secrets” as used herein shall have the meaning as stated in  
24 RCW 19.108.010(4) ; i.e., information that derives economic value, actual or potential,  
25 from not being generally known to, or not being readily ascertainable by proper means by,

1 other persons who can obtain competitive advantage or economic value from its  
2 disclosure or use. "Trade secrets" shall also have the meaning of sensitive financial or  
3 actuarial data/information integral to the business operations of a party for which the party  
4 has a demonstrable interest in avoiding disclosure.

5 If there is any dispute as to whether any document or information should properly  
6 be classified as Confidential Information or as Attorneys' Eyes Only Information, or  
7 should not be designated as either, the Special Master will, as set forth below, make the  
8 determination as to what classification, if any, is proper.

9 (c) Lead Attorney: As used herein, "Lead Attorney" shall mean the individual  
10 attorney identified by each of the four Intervener Groups in response to the Fourth Order  
11 of the Insurance Commissioner. If an Intervener Group files a Notice of Substitution,  
12 substituting another individual attorney for the current Lead Attorney, then the substituted  
13 attorney shall be deemed thereafter to be the Lead Attorney for that party. It is  
14 contemplated that all notices can and will be accomplished through service on the Lead  
15 Attorney and that the Lead Attorney will be the only person allowed to speak, question  
16 and argue on behalf of his/her Intervener Group at any status conference, discovery  
17 conference, motion hearing and at the hearing on this Matter. *Except that*, by agreement  
18 (which should not be unreasonably withheld) or upon further order for good cause shown  
19 an Intervener Group may temporarily substitute another individual attorney for the Lead  
20 Attorney.

21 (d) Parties' Counsel. As used herein, "Parties' Counsel" or "Party's Counsel"  
22 shall refer to the following attorneys or law firms who have been (or members of which  
23 have been) proposed by the parties to have access to Confidential Information and  
24 Attorneys' Eyes Only Information.

25 *Premiera: Preston Gates & Ellis LLP*

1                   *Premiera Watch Coalition:*

2                   For Welfare Rights Organizing Coalition--Columbia Legal Services; Kurt  
3                   Calia and David Jolley (of Covington & Burling);

4                   For Washington Protection and Advocacy System—Daniel S. Gross, David  
5                   Girard, Deborah A. Dorfman;

6                   For Washington Citizen Action, American Lung Association of  
7                   Washington, Northwest Federation of Community Organizations, Northwest  
8                   Health Law Advocates, Service Employees International Union Washington State  
9                   Council, The Children’s Alliance, Washington Academy of Family Physicians,  
10                  Washington Association of Churches and Washington State NOW—Sirianni,  
11                  Youtz, Meier & Spoonemore;

12                  For Washington Association of Community and Migrant Health Centers—  
13                  Greg Montgomery (of Miller Nash, LLP)

14                  *The Hospital Association:* Bennett Bigelow & Leedom, P.S.; Taya Briley  
15                  (AWPHD General Counsel)

16                  *Washington State Medical Association:* Coopersmith & Associates

17                  *The Alaska Interveners:* Alaska Legal Services Corp.; Burr, Pease &  
18                  Kurtz; Ardith Lynch, James Parrish, Mary E. Greene and Michael P. Hostma (of  
19                  the University of Alaska)

20                  Deletions from and substitutions or additions to this listing of Parties’  
21                  Counsel may be made by agreement (which should not be unreasonably withheld)  
22                  or upon further order for good cause shown.

23                  (e)     Disclose or Disclosure: As used herein, “disclose” or “disclosure” shall  
24                  mean to in any manner, directly or indirectly, discuss, give, transmit, reveal, show, copy,  
25                  provide substantive information about, provide substantive knowledge of, provide access

1 to, permit or authorize the use of, or otherwise communicate any information, document  
2 or the contents thereof.

3 (f) Treatment of Members. The presumption shall be that the individual  
4 members of Premera and of the constituent interveners shall not have access to any  
5 Confidential or Attorneys' Eyes Only Information, except insofar as a member has access  
6 to such information in another capacity, e.g., as Party's Counsel or as a consultant. The  
7 Special Master will consider on a case-by-case basis whether there is reason for members  
8 of any given constituent intervener to have access to Confidential Information.

9 **2. Marking of Confidential Information or Attorneys' Eyes Only**  
10 **Information.**

11 (a) Marking: Documents, information, or tangible items shall be designated  
12 Confidential Information or Attorneys' Eyes Only Information within the meaning of this  
13 Protective Order in the following ways:

14 (1) In the case of documents that are produced by any party, designation shall  
15 be made by placing on each page of the document the legend "Confidential" or  
16 "Attorneys' Eyes Only."

17 (2) In the case of document requests (excluding requests made under the  
18 Washington State Public Disclosure Act, RCW ch. 42.17, Alaska's Public Records Law,  
19 AS 40.25.100 et seq. or the federal Freedom of Information Act, 5. U.S.C. 552, et seq. as  
20 amended in Public Law 104-231) that are made to the OIC Staff for Premera documents  
21 and in the case of any subpoenas to the OIC Staff consultants that seek Premera  
22 documents, the OIC Staff and its consultants shall not be required to produce copies of  
23 any documents that have been obtained from Premera. Rather, the OIC Staff and/or its  
24 consultants shall respond to the document requests and subpoenas by identifying, by  
25 consecutive numbers, the responsive documents and Premera shall provide the requesting

1 party with a copy of the responsive documents. The parties will pay for all copies of  
2 documents that they request. Details about the costs will be resolved by agreement of the  
3 requesting and the producing party, but in no event will any party be required to pay more  
4 than the actual copying cost.

5 (3) In the case of documents that are obtained from third parties through  
6 subpoena, deposition or other discovery in this proceeding, designation shall be made as  
7 follows:

8 (i) The third party may itself designate its documents or other  
9 materials as “Confidential” or “Attorneys’ Eyes Only” at the time that it  
10 produces the documents or other materials. In order to facilitate this  
11 alternative, the party issuing the subpoena for, or otherwise requesting, the  
12 documents shall attach a copy of this Protective Order to its subpoena or to  
13 its request for those documents.

14 (ii) In addition to any designation placed on the document or  
15 other material by the producing third party, upon receipt of such documents  
16 by Premera’s Counsel or by the Lead Attorney for any receiving party, the  
17 documents or tangible things automatically shall be deemed Attorneys’  
18 Eyes Only Information. Within five (5) business days of receipt of third  
19 party documents or other materials, Premera’s Counsel or Lead Attorney  
20 for a receiving party shall furnish a copy thereof to Premera’s Counsel and  
21 Lead Attorneys for any other parties to this litigation who have not  
22 previously received such documents from the producing third party. (If the  
23 material cannot be reproduced for any legitimate reason, Premera’s  
24 Counsel and Lead Attorneys for all other parties shall be given an  
25 opportunity to inspect it for purposes of making a confidentiality

1 designation.) Each party shall have five (5) calendar days from its receipt  
2 of the documents or its inspection of the material within which to formally  
3 designate a third party document or tangible thing as Confidential  
4 Information or Attorneys' Eyes Only Information, provided that only  
5 documents or things generated by the designating party, or derived from  
6 information generated by the designating party, shall be so designated; and  
7 provided further any party may object to such designation on the grounds  
8 that such information has allegedly been previously produced as a result of  
9 a request under the Washington State Public Disclosure Act, RCW ch.  
10 42.17, Alaska's Public Records Law, AS 40.25.100 *et seq.* or the federal  
11 Freedom of Information Act, 5 U.S.C. 552, *et seq.* as amended in Public  
12 Law 104-231 or other legal authority for gaining access to information  
13 outside of formal discovery, in which case the Special Master will  
14 determine whether such designation is proper; pending the Special  
15 Master's determination, the designation of Confidential Information or  
16 Attorneys' Eyes Only Information shall remain in effect. Any party  
17 wishing to so designate a document or tangible thing obtained from a third  
18 party shall inform all the other parties and the third party in writing. All  
19 parties shall promptly label their copies of designated documents  
20 accordingly, and the documents shall bear that designation unless contested  
21 pursuant to Section 8 below. If no party or third party designates a  
22 document or tangible thing as Confidential Information or Attorneys Eyes  
23 Only Information within the five (5) day period, the  
24 presumptive Attorneys' Eyes Only designation terminates.  
25

1 (4) In the case of requests for admission (if such requests are authorized by  
2 subsequent order herein) and the information contained therein, designation shall be made  
3 by placing on the pages containing the confidential information the legend "Confidential"  
4 or "Attorneys' Eyes Only," as the case may be. If any of the pages are so designated, then  
5 the cover page of the discovery response shall state: "Contains Confidential [and/or  
6 Attorneys' Eyes Only] Information Protected by Order of the Special Master and the  
7 Insurance Commissioner."

8 (5) In the case of tangible items, designation shall be made by visibly  
9 marking the item "Confidential" or "Attorneys' Eyes Only," as the case may be.

10 (6) In producing original files and records for inspection, no marking  
11 need be made by the producing party in advance of the inspection. For the purposes of  
12 the inspection, all documents produced shall be deemed Attorneys' Eyes Only  
13 Information and shall be inspected only by Parties' Counsel, the OIC Staff, its legal  
14 counsel and its consultants, and the services retained by counsel to photocopy or image  
15 documents or evidence. Thereafter, upon selection of specified documents for copying by  
16 the inspecting party, the producing party shall mark as "Confidential" or "Attorneys'  
17 Eyes Only" the copies of such documents at the time the copies are produced to the  
18 inspecting party.

19 (b) Good Faith: The parties agree to designate information as Confidential  
20 Information or Attorneys' Eyes Only Information on a good faith basis and not for  
21 purposes of harassing the receiving party or for purposes of unnecessarily restricting the  
22 receiving party's access to information for use in this Matter. The parties will not  
23 designate as Confidential Information or Attorneys' Eyes Only Information any document  
24 or information that has previously been disclosed voluntarily and without any claim of  
25 confidentiality or that was disclosed after a claim of confidentiality was legally

1 determined to be invalid or that was disclosed in response to a public disclosure request  
2 made pursuant to Washington State Public Disclosure Act, RCW ch. 42.17, Alaska's  
3 Public Records Law, AS 40.25.100 et seq. or the federal Freedom of Information Act, 5.  
4 U.S.C. 552, et seq. as amended in Public Law 104-231 to any person or entity not  
5 affiliated with the designating party.

6 (c) Receipt of Designated Information: Except as permitted by further order of  
7 the Special Master, or upon appeal by the Commissioner, or by subsequent written  
8 agreement of the designating party, such designated documents and testimonial  
9 information shall be safeguarded and handled by the receiving party and/or its Agents  
10 and/or by the Lead Attorneys, and Parties' Counsel as the case may be, in accordance with  
11 the provisions of this Protective Order and the applicable Confidentiality Agreement(s).

12 The receiving party, that Party's Counsel and the party's Agents, shall not copy,  
13 reproduce, summarize, or abstract Confidential Information or Attorneys' Eyes Only  
14 Information, except as expressly authorized by this Protective Order and then only to the  
15 extent that such copying, reproduction, summarization, or abstraction is reasonably  
16 necessary for the conduct of this Matter.

17 The receiving party and Parties' Counsel shall mark all such copies, reproductions,  
18 summaries, and abstracts in the same manner as the designated materials on which they  
19 are based. All such copies, reproductions, summaries, and abstracts, including attorney  
20 memoranda and work product, shall be subject to the terms of this Protective Order.

### 21 **3. Right of Access to Designated Information.**

22 (a) Confidential Information: Disclosure of information designated as  
23 Confidential Information, including summaries thereof, shall be limited to the  
24 Commissioner, the Commissioner's legal counsel, the Special Master, the Washington  
25 Attorney General, the Alaska Director of Insurance and her legal counsel, and their

1 respective staffs that have been assigned to assist them in regard to this matter, and to the  
2 following persons: (1) the OIC Staff and the Alaska Division of Insurance Staff assigned  
3 to the conversion and their respective legal counsel and consultants; (2) Parties' Counsel  
4 (3) one representative of Premera designated to assist Premera's Counsel with the  
5 preparation of this hearing, provided that each such representative shall execute an  
6 Appendix A Declaration; (4) one representative of each Intervener Group designated to  
7 assist Parties' Counsel with the preparation of this hearing, provided that such  
8 representative shall execute an Appendix A Declaration; (5) the consultants or experts  
9 retained by the parties or Parties' Counsel to consult or testify in the Matter (upon  
10 compliance with Section 4 below); (6) court reporters and videographers of sworn  
11 proceedings; (7) services retained by counsel to photocopy or image documents or  
12 evidence; (8) in regard to a particular document containing Confidential Information, any  
13 person whom the document shows on it face has previously seen or been sent the  
14 document, such as authors, drafters, recipients, and copyholders of the document; and (9)  
15 non-expert witnesses and prospective witnesses, to the extent deemed necessary by  
16 Parties' Counsel to prepare for, or to give testimony regarding facts at issue in, this  
17 hearing, but as to this category Parties' Counsel must retain physical custody of the  
18 Confidential Information document or object unless consent to release it is given by the  
19 party that designated it as Confidential Information. Disclosure of Confidential  
20 Information to any expert or consultant shall be limited to that Confidential Information  
21 necessary for the expert's or consultant's consultation work or preparation to testify.

22       Persons in categories (3) through (9) above shall be required to execute a  
23 declaration and agreement in the form of Appendix A hereto (herein, an "Appendix A  
24 Declaration"), as set forth in subsection 3(d) below, before receiving any Confidential  
25 Information.

1 (b) Attorneys' Eyes Only Information:

2 (i) Disclosure of information designated as Attorneys' Eyes Only Information,  
3 including summaries thereof, shall be limited to the Commissioner, the Commissioner's  
4 legal counsel, the Special Master, the Washington Attorney General, the Alaska Director  
5 of Insurance and her legal counsel, and their respective staffs that have been assigned to  
6 assist them in regard to this matter, and to the following persons: (1) the OIC Staff and  
7 the Alaska Division of Insurance Staff assigned to the conversion and their respective  
8 legal counsel and consultants; (2) Parties' Counsel; (3) court reporters and videographers  
9 of sworn proceedings in which the Attorneys' Eyes Only information is raised; (4)  
10 services retained by Parties' Counsel to photocopy or image documents or evidence; (5) in  
11 regard to a particular document containing Attorneys' Eyes Only Information, any person  
12 whom the document shows on its face has previously seen or been sent the document, such  
13 as authors, drafters, recipients, and copyholders of the document; and (6) deponents, but  
14 only to the extent that the procedure set forth in subsection 3(e) below is followed.  
15 Persons described in categories (3) through (6) above shall be required to execute an  
16 Appendix A Declaration, as set forth in subsection 3(d) below, before receiving any  
17 Attorneys' Eyes Only Information.

18 ii) If Parties' Counsel for a party receiving Attorneys' Eyes Only Information  
19 believes that it is necessary to disclose such information to person(s) other than as set  
20 forth in the immediately preceding subsection 3(b)(i) in order to properly prepare this  
21 hearing, the following procedures shall be employed:

22 (1) Premera's Counsel or the Lead Attorney for the receiving party as the case  
23 may be shall notify, in writing by overnight delivery or by facsimile, the Lead Attorneys  
24 and/or Premera's Counsel for the party designating the Attorneys' Eyes Only Information  
25 of their or their constituent Intervener's desire to disclose such information and shall

1 identify the persons(s) to whom they intend to make disclosure, describe the general  
2 purpose of the disclosure, and identify the Attorneys' Eyes Only documents or  
3 information that they seek to disclose.

4 (2) If no objection to such disclosure is made by Premera's Counsel or the  
5 Lead Attorney for the designating party, as the case may be, within three (3) business days  
6 of receipt of such notification, the Lead Attorney(s) or Premera's Counsel, as the case  
7 may be, for the receiving party shall be free to make such disclosure to the designated  
8 person(s); provided, however, that the Lead Attorney(s) or Premera's Counsel, as the case  
9 may be, for the receiving party shall serve upon Lead Attorney(s) or Premera's Counsel,  
10 as the case may be, for the designating party, prior to disclosure, an Appendix A  
11 Declaration, whereby such person(s) agree to comply with and be bound by this Protective  
12 Order and by any applicable Confidentiality Agreement(s).

13 (3) If Premera's Counsel or the Lead Attorney(s), as the case may be, for the  
14 designating party objects in writing to such disclosure, no disclosure shall be made unless  
15 and until the Special Master, or upon appeal the Insurance Commissioner, authorizes such  
16 disclosure. The party wishing to make such disclosure may bring before the Special  
17 Master the question of whether the particular Attorneys' Eyes Only Information can be  
18 disclosed to the identified person(s); provided, however, that the parties must first meet  
19 and confer in good faith in person or by telephone and within three (3) business days of  
20 the written objection. If the person for whom the disclosure is sought is an expert or  
21 consultant of the party requesting the disclosure, then the party objecting to the disclosure  
22 shall have the burden of proving to the Special Master the inappropriateness of such  
23 disclosure. If the person for whom the disclosure is sought is not an expert or consultant  
24 of the requesting party, then the party requesting the disclosure shall have the burden of  
25 proving to the Special Master: (a) that the party seeking to disclose the information to the

1 particular person has a compelling reason to do so and (b) that such reason is not  
2 outweighed by the danger that, in disclosing the Attorneys' Eyes Only Information to that  
3 person, there is a risk that the designating party or a third party would be harmed.

4 (c) Prohibition Against Disclosure to Unauthorized Persons:

5 All information that is designated as or deemed Confidential Information or  
6 Attorneys' Eyes Only Information shall be kept confidential in compliance with the terms  
7 of this Protective Order and shall not be disclosed (as that term is defined above) to any  
8 person not authorized to receive the information under the terms of this Protective Order.  
9 Confidential Information and Attorneys' Eyes Only Information received by any person or  
10 entity shall be used only for purposes of this Matter, that is, for the review of Premera's  
11 proposed conversion by the Insurance Commissioner and by the Washington Attorney  
12 General.

13 (d) Requirement to Obtain a Written Declaration:

14 Except as otherwise provided herein, Confidential Information and Attorneys'  
15 Eyes Only Information shall not be disclosed to anyone authorized by this Protective  
16 Order to see such information unless and until the Party's Counsel for the party wishing  
17 to make such disclosure has obtained an executed Appendix A Declaration from each  
18 person to whom disclosure is to be made. The originals of all signed declarations shall be  
19 maintained by the Parties' Counsel throughout the duration of this litigation, including all  
20 appeals.

21 (e) Use of Designated Information in Depositions: If, in the course of this  
22 proceeding, depositions are conducted that involve Confidential Information or Attorneys'  
23 Eyes Only Information, Parties' Counsel may designate, on the record, the portion(s) of  
24 the deposition which they believe may contain Confidential Information or Attorneys'  
25 Eyes Only Information.

1 (i) If designation of Confidential Information is made during the deposition,  
2 those portions of said depositions involving such information will be taken with no one  
3 present except Parties' Counsel and (1) one designated representative of Premera; (2) one  
4 designated representative of each of the Intervener Groups; (3) the OIC Staff, the ADI  
5 Staff, and their respective legal counsel and consultants; provided, however, that the OIC  
6 Staff and the ADI Staff are requested to limit the number of consultants each brings to any  
7 given deposition; (4) the deponent; and (5) the court reporter and videographer, if any.

8 (ii) If designation of Attorneys' Eyes Only Information is made during the  
9 deposition, those portions of said depositions involving such information will be taken  
10 with no one present except Parties' Counsel and (1) one designated representative of the  
11 party producing the Attorneys' Eyes Only Information; (2) the OIC Staff, the ADI Staff,  
12 and their respective legal counsel and consultants; provided, however, that the OIC Staff  
13 and the ADI Staff are requested to limit the number of consultants each brings to any  
14 given deposition; (3) the deponent; and (4) the court reporter and videographer, if any.

15 (iii) A witness whose deposition is being taken may see any document  
16 identified as Confidential Information or Attorneys' Eyes Only Information if and only if  
17 the document is first handed to Lead Attorney or Premera's Counsel, as the case may be,  
18 for the designating party for inspection, and either those attorney(s) for the designating  
19 party has no objection to the witness's seeing the document or the witness has previously  
20 seen or has been sent the document. If Party's Counsel for the designating party objects,  
21 he or she may (1) request that the witness sign an Appendix A Declaration and, if the  
22 witness does so, then the witness can see the document and be questioned at that time  
23 about it; (2) note the objection for the record, at which point the document shall not be  
24 shown to the witness and the witness shall not be questioned about the document or its  
25 contents, pending a motion and ruling by the Special Master, but the deposition shall

1 proceed in regard to other areas of inquiry; or (3) recess the deposition so that the matter  
2 can be brought before the Special Master for determination.

3 (iv) Unless there has been no designation of Confidential Information or  
4 Attorneys' Eyes Only Information during the deposition, for the first seven (7) days after  
5 receipt of any volume of a deposition transcript by Parties' Counsel the entire transcript  
6 volume (and any exhibits) shall be deemed to be Attorneys' Eyes Only Information, so as  
7 to give Parties' Counsel an opportunity to designate specific portions of the volume (by  
8 specific page and line reference or exhibit number) as Confidential Information or as  
9 Attorneys' Eyes Only Information. Any corrections to the deposition transcript by the  
10 deponent shall also be deemed to be subject to the same confidentiality presumption as is  
11 set forth in the previous sentence of this subsection 3(e)(iv). Unless otherwise agreed by  
12 Parties' Counsel the right to make confidentiality designations on deposition transcripts  
13 shall be waived unless made within the time limit prescribed in this subsection 3(e)(iv).  
14 The court reporter shall be advised in writing of any confidentiality designations made  
15 pursuant to this subsection 3(e)(iv) and shall mark the pages of the Original transcript and  
16 any deposition exhibits accordingly and shall place on the cover of each volume of the  
17 transcript containing such designated information a statement: "Contains Confidential  
18 [and/or Attorneys' Eyes Only] Information Protected by Order of the Special Master and  
19 the Insurance Commissioner, and shall include an index of the pages in which  
20 Confidential and/or Attorneys' Eyes Only information appears. Each party shall mark the  
21 pages and covers of all its copies of the transcript volumes in the same way. Transcripts  
22 of testimony, portions thereof, deposition exhibits, and documents containing Confidential  
23 Information or Attorneys' Eyes Only Information from a deposition shall be filed only  
24 under seal as described in Section 7.

25 **4. Experts and Consultants.**

1 The experts and consultants described in subsection 3(a) above (other than the OIC  
2 Staff's and the ADI Staff's consultants) shall include only persons or entities that neither  
3 compete directly nor indirectly with, nor are currently or regularly employed or engaged  
4 by persons or entities that compete directly or indirectly with, the party whose  
5 Confidential Information or (if permitted under subsection 3(b)(ii)) Attorneys' Eyes Only  
6 Information is sought to be disclosed to such experts or consultants. "Compete with," as  
7 used herein, means to offer comparable products or services to those offered by the  
8 designating party, within a geographic area currently served by the designating party.

9 In addition to the requirements set forth in the preceding paragraph, information  
10 designated as Attorneys' Eyes Only Information shall not be disclosed to any expert or  
11 consultant unless and until subsection 3(b)(ii) is complied with.

12 **5. Inadvertent Production.**

13 (a) If, through inadvertence, a party provides any confidential information  
14 pursuant to this litigation without marking the information as Confidential Information or  
15 Attorneys' Eyes Only Information, that party may so inform the receiving party and  
16 provide copies of such information marked with the correct designation. The receiving  
17 party shall then return the unmarked copies to the designating party. To the extent that the  
18 receiving party has already disclosed such information to those not authorized to receive  
19 Confidential Information or Attorneys' Eyes Only Information, as the case may be, the  
20 receiving party shall promptly notify the designating party as to the specific recipients of  
21 such information and shall take all reasonable steps to remove such information and all  
22 copies thereof from said recipients.

23 (b) If, through inadvertence, a party provides any document as to which it has  
24 a claim of attorney-client privilege, attorney work product, or other discovery privilege or  
25 immunity, the producing party may inform the receiving party of the privileged or

1 immune nature of the disclosed document, and the receiving party shall make no further  
2 use of said documents and shall return all copies of such documents (and destroy all  
3 summaries of same) within five (5) business days of receipt of written notice from the  
4 producing party; provided, however, that the receiving party may, upon giving notice  
5 within the same five (5)-day period, file a motion with the Special Master regarding the  
6 propriety of the assertion of a discovery privilege or immunity, in which case the  
7 receiving party shall make no further use or disclosure of the document until the Special  
8 Master has ruled; and provided further that any filing of or other submission made with  
9 respect to such a document shall be subject to the same requirements as if it had been  
10 marked Attorneys' Eyes Only Information. To the extent that the receiving party has  
11 already disclosed such documents to another person or party, the receiving party shall  
12 promptly notify the producing party as to the specific recipients of such documents and  
13 shall take reasonable steps to retrieve such documents from said recipients.

14 **6. Disclosure Contrary to this Agreement.**

15 If Confidential Information or Attorneys' Eyes Only Information is disclosed to  
16 any person other than in the manner authorized by this Protective Order, the person(s)  
17 responsible for the disclosure must immediately bring all pertinent facts relating to such  
18 disclosure to the attention of the Lead Attorney or Premera's Counsel, as the case may be,  
19 and Party's Counsel of the party with whom (s)he is affiliated and the Lead Attorney or  
20 Premera's Counsel, as the case may be, of the designating party and, without prejudice to  
21 any other rights and remedies of the designating party, make every reasonable effort to  
22 prevent further disclosure by it or by the person who was the recipient of such  
23 information.

24 **7. Filing Confidential or Attorneys' Eyes Only Information.**

25

1 Any document, pleading, brief, declaration, affidavit, or tangible item that contains  
2 Confidential Information or Attorneys' Eyes Only Information, if filed or submitted to the  
3 Special Master or to the Commissioner or to any Court, shall be filed as follows:

4 (a) If any document containing Confidential Information or Attorneys' Eyes  
5 Only Information is placed in or among the papers in this Matter or in any court  
6 proceeding or appeal, it shall be filed in a sealed envelope or container marked with the  
7 case caption and a notice substantially as follows:

8 CONFIDENTIAL

9 This envelope or container holds information of [name of party]  
10 filed under seal pursuant to a protective order. This envelope or  
11 container may not be opened, and the contents hereof may not be  
12 displayed or revealed, except by direction of the Special Master for  
the Insurance Commissioner or by the Insurance Commissioner or  
by a Court of proper jurisdiction or by written consent of [name of  
party].

13 (b) The Public Affairs Division of the Office of the Insurance Commissioner  
14 shall inform any member of the public desiring access to any of the papers in this Matter  
15 filed under seal that the papers have been sealed.

16 **8. Acceptance of a Designated Document Does Not**  
17 **Constitute Agreement with Its Designation.**

18 Acceptance by a party of any information designated as Confidential Information  
19 or Attorneys' Eyes Only Information shall not constitute a concession that the  
20 information, document or thing is properly so designated. A receiving party may contest a  
21 designation that information is Confidential Information or Attorneys' Eyes Only  
22 Information. If the receiving party disagrees with the designation and marking of any  
23 such information, then the parties shall first try to resolve the matter informally. If they  
24 cannot do so, the party designating the document shall indicate in writing the reason for its  
25 designation. The party opposing the designation may present the dispute to the Special

1 Master by motion or otherwise. In the resolution of such a dispute, the burden of  
2 establishing the proper designation shall be on the party who is making the designation.

3 **9. Objections Preserved.**

4 This Protective Order shall be without prejudice to the right of any party or any  
5 third person to oppose production of any document or information on grounds other than,  
6 or in addition to, claims that the document or other information constitutes Confidential  
7 Information or Attorneys' Eyes Only Information.

8 **10. Right to Seek or Agree to Other Orders.**

9 This Protective Order shall not prevent any party or the OIC Staff or any third  
10 person from applying to the Special Master for relief therefrom, or from applying to the  
11 Special Master for further or additional protective orders. (E.g., anyone may seek a  
12 protective order regarding what it believes is highly sensitive personal information,  
13 including personnel, medical and similar records.)

14 Nor shall this Protective Order prevent the parties from agreeing among  
15 themselves to modify this Protective Order, subject to the approval of the Special Master,  
16 or to vacate this Order, subject to recommendation of the Special Master and the approval  
17 of the Commissioner. Nothing in this Protective Order shall limit a party's use or  
18 dissemination of its own information.

19 **11. Continued Protection.**

20 In the event that any Confidential Information or Attorneys' Eyes Only  
21 Information is used in any administrative, court or other proceeding in connection with  
22 this Matter, it shall not lose status as Confidential Information or Attorneys' Eyes Only  
23 Information through such use.

24 **12. Hearing.**

1 At the Hearing in this Matter, exhibits containing Confidential Information or  
2 Attorneys' Eyes Only Information shall, at the discretion of the designating party and with  
3 the permission of the Commissioner, be filed under seal. If a party or the OIC Staff  
4 intends to refer to any Confidential Information or Attorneys' Eyes Only Information in  
5 open hearing, the party seeking to cite or rely upon such information or the OIC Staff as  
6 the case may be shall obtain the designating party's consent prior to doing so or give  
7 reasonable notice to the designating party to allow it to seek protection of the  
8 Commissioner (e.g., by clearing the hearing room of third parties).

9 **13. Other Litigation.**

10 If any person, agency or entity having possession, custody, or control of any  
11 Confidential Information or Attorneys' Eyes Only Information receives a subpoena or  
12 other process or order to produce such information in another legal proceeding, that  
13 person shall, within two (2) business days of receiving such subpoena, process or order:  
14 (1) notify Lead Attorney for the designating party of the subpoena or other process or  
15 order; (2) notify and furnish Lead Attorney or Premera's Counsel as the case may be for  
16 the designating party with a copy of the subpoena or other process or order; and (3)  
17 cooperate with respect to all reasonable procedures sought to be pursued by the  
18 designating party. The designating party shall have the burden of defending against such  
19 subpoena or other process or order. The person receiving the subpoena or other process or  
20 order shall be entitled to comply with it if the designating party fails to obtain an order  
21 modifying or quashing the subpoena or other process or order within 14 days after the  
22 designating party receives a copy of the same.

23 **14. Return or Destruction of Designated Information.**

24 At the conclusion of this action, including any appeals, all Confidential  
25 Information and Attorneys' Eyes Only Information furnished pursuant to this Protective

1 Order, and all copies thereof, shall be returned to counsel for the producing party or, at the  
2 producing party's option, destroyed by counsel for the receiving party; provided, however,  
3 that this requirement shall not apply to the OIC Staff or the ADI Staff and their respective  
4 legal counsel and consultants; provided further, however, that in regard to said  
5 consultants, this Paragraph shall not be read to change, modify or interfere with any  
6 provision of any confidentiality agreement that the consultant has entered into with any  
7 providing party. Parties' Counsel for the receiving party shall certify to the producing  
8 party compliance with this provision. Notwithstanding the foregoing,, Parties' Counsel  
9 shall be entitled to retain file copies of all pleadings, motion papers, legal memoranda,  
10 correspondence, and work product.

11 **15. Continued Agreement to Confidentiality.**

12 The provisions of this Protective Order insofar as they restrict the disclosure,  
13 communication, and use of Confidential Information and Attorneys' Eyes Only  
14 Information shall continue to be binding after the conclusion of this Matter.

15 **16. Other Privacy Rights Unaffected.**

16 This Order shall not be interpreted as an agreement, authorization or mandate by  
17 or for any party to waive any privacy right, privilege or other legal defense against the  
18 disclosure of information for any reason other than because the information is  
19 "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY," as defined in §§ 1(a) and 1(b) of  
20 this Order above.

21 IT IS FURTHER ORDERED THAT access to, and examination of, Confidential  
22 Information and Attorneys' Eyes Only Information by parties or Parties' Counsel or  
23 anyone else is conditioned upon the execution of a Confidentiality Agreement between  
24 Premera and the respective Intervener. *Except that*, this Order is subject to modification if  
25 the parties do not reach agreement as to the form of a Confidentiality Agreement.

1 IT IS FURTHER ORDERED THAT any subpoenas, document requests, or other  
2 discovery served by any party must be served on all parties.

3 On this 1st day of May, 2003, the Special Master hereby recommends to the  
4 Commissioner that this Protective Order be entered  
5  
6  
7

8 \_\_\_\_\_  
9 GEORGE FINKLE  
10 SPECIAL MASTER FOR THE  
11 INSURANCE COMMISSIONER

12 The Insurance Commissioner having reviewed the Findings and Recommendations  
13 of the Special Master, IT IS HEREBY ORDERED that this PROTECTIVE ORDER be,  
14 and hereby is ENTERED this \_\_\_\_\_ day of May, 2003.  
15

16 \_\_\_\_\_  
17 MIKE KREIDLER  
18 INSURANCE COMMISSIONER  
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**APPENDIX A**

**BEFORE THE INSURANCE COMMISSIONER  
OF THE STATE OF WASHINGTON**

In the Matter of the Application  
regarding the Conversion and  
Acquisition of Control of Premera Blue  
Cross and its Affiliates

Docket No. G02-45

DECLARATION AND AGREEMENT  
TO COMPLY WITH PROTECTIVE  
ORDER AND CONFIDENTIALITY  
AGREEMENT CONCERNING  
CONFIDENTIAL AND ATTORNEYS'  
EYES ONLY INFORMATION

**DECLARATION AND AGREEMENT OF**

\_\_\_\_\_

1. My name is \_\_\_\_\_. I have  
personal knowledge of the facts set forth in this Declaration and Agreement, and if called  
and sworn as a witness, I would testify competently to those facts.

2. I live at \_\_\_\_\_.

3. I am employed as (state position): \_\_\_\_\_.

4. The full name and address of my employer is as follows:

\_\_\_\_\_  
\_\_\_\_\_.

4a. I am affiliated with the following Intervener:

\_\_\_\_\_.

1           5.       I am aware that an order entitled Protective Order("Protective Order") has  
2       been entered in the case of *In the Matter of the Application regarding the Conversion and*  
3       *Acquisition of Control of Premera Blue Cross and its Affiliates et al.*, Docket No. G02-45  
4       (the "Matter"), a matter before the Insurance Commissioner of the State of Washington  
5       (the "Commissioner"). A copy of that Protective Order has been given to me. I have  
6       carefully reviewed its provisions.

7           6.       I am also aware that confidentiality agreements have been entered into  
8       between Premera and the Interveners in the Matter ("Confidentiality Agreements"). I  
9       have been provided with a copy of the Confidentiality Agreement executed by the  
10      Interveners with which I am affiliated in this Matter, and I have carefully reviewed the  
11      provisions of the Confidentiality Agreement. I understand that, if a document or other  
12      information is produced pursuant to the Protective Order, that document or other  
13      information is also subject to the provisions of the Confidentiality Agreement.

14          7.       I understand and agree that documents, information, and tangible items  
15      designated as Confidential Information and Attorneys' Eyes Only Information are subject  
16      to the provisions of both the Protective Order and the Confidentiality Agreement.

17          8.       In exchange for the opportunity to examine Confidential Information  
18      and/or Attorneys' Eyes Only Information, I agree to comply with, and be bound by, the  
19      provisions of both the Protective Order and the Confidentiality Agreement. I also agree  
20      that the entity whose Confidential Information or Attorneys' Eyes Only Information I see  
21      is an intended third party beneficiary of my agreement to so comply and be bound, and is  
22      entitled to enforce it.

23          9.       Without limiting the foregoing, I agree that I will not use or disclose any  
24      document, deposition, information, or other material designated Confidential Information  
25      or Attorneys' Eyes Only Information to, or discuss it with anyone, except as expressly

1 permitted under the provisions of the Protective Order and other persons permitted access  
2 to such material under the Protective Order who have signed declarations under penalty of  
3 perjury undertaking to preserve the Confidentiality of such material; provided, however,  
4 that in no case shall I discuss Attorneys' Eyes Only Information with someone who is  
5 only permitted to see Confidential Information.

6 10. I agree to use any material designated Confidential Information or  
7 Attorneys' Eyes Only Information solely in connection with my participation in the  
8 Matter and any appeals thereof, or appeals from actions taken in the course of the Matter,  
9 and for no other purpose.

10 11. I agree that the entity whose Confidential Information and/or Attorneys'  
11 Eyes Only Information I see may seek to obtain temporary, preliminary and/or permanent  
12 injunctive relief against me for any disclosure or threatened disclosure of any Confidential  
13 Information or Attorneys' Eyes Only Information in violation of the Protective Order or  
14 the Confidentiality Agreement and/or contempt orders and/or damages against me and/or  
15 others for any violation of the Protective Order or the Confidentiality Agreement.

16 12. I hereby agree and consent to the exercise of personal jurisdiction over me,  
17 for purposes of obtaining and adjudicating any temporary, preliminary or permanent  
18 injunction, contempt motion, dispute or claim regarding the disclosure or threatened  
19 improper use or disclosure of any Confidential Information or Attorneys' Eyes Only  
20 Information in violation of the Protective Order or the Confidentiality Agreement, and/or  
21 for seeking contempt orders against me and/or for seeking damages against me for such  
22 violations, by any state and federal court in the Western District of Washington and, to the  
23 extent permitted, by the Insurance Commissioner of the State of Washington and his  
24 Special Master in this Matter.  
25

13. I have been advised that I can seek advice of counsel before signing this declaration, and I have either done so or have decided that I do not want to seek legal advice.

I declare under penalty of perjury under the laws of the laws of the State of Washington and of the United States of America that the foregoing declaration is true and correct.

Executed this \_\_\_\_ day of \_\_\_\_\_, 2003, at \_\_\_\_\_, \_\_\_\_\_.

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[Print name]